

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BRANDON McGASKEY,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 3:20-cv-00233-RCJ-WGC

**ORDER**

On April 15, 2020, this Court issued an order directing Plaintiff Brandon McGaskey to file his own amended complaint and his own fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400 within thirty (30) days from the date of that order. (ECF No. 1 at 14). The thirty-day period has now expired, and Plaintiff Brandon McGaskey has not filed an amended complaint, an application to proceed *in forma pauperis*, paid the full \$400 filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with

1 local rules).

2 In determining whether to dismiss an action for lack of prosecution, failure to obey  
3 a court order, or failure to comply with local rules, the court must consider several factors:  
4 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
6 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
7 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at  
8 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

9 Here, the Court finds that the first two factors, the public's interest in expeditiously  
10 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
11 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
12 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
13 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
14 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring  
15 disposition of cases on their merits—is greatly outweighed by the factors in favor of  
16 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
17 the court's order will result in dismissal satisfies the "consideration of alternatives"  
18 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779  
19 F.2d at 1424.

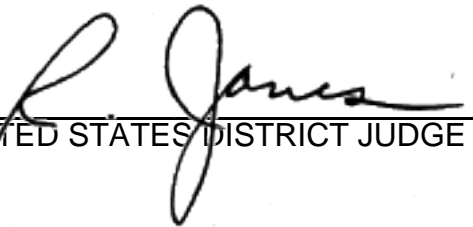
20 The Court's order requiring Plaintiff Brandon McGaskey to file his own amended  
21 complaint within thirty (30) days expressly stated: "If any of these plaintiffs fails to file a  
22 signed amended complaint within 30 days of this order, that plaintiff's case will be  
23 dismissed without prejudice to that plaintiff later filing a new action with a new complaint."  
24 (ECF No. 1 at 14). Further, the Court's order requiring Plaintiff Brandon McGaskey to  
25 file his own application to proceed *in forma pauperis* or pay the full filing fee within thirty  
26 (30) days expressly stated: "If any of these plaintiffs fails to either pay the complete filing  
27 fee or file a complete application to proceed *in forma pauperis*, including the required  
28 financial attachments, within 30 days of the date of this order, the action by that plaintiff

1 will be dismissed without prejudice to that plaintiff later filing an action in a new case with  
2 a new complaint and either paying the filing fee or filing a complete application to proceed  
3 *in forma pauperis* with the required financial documents.” (*Id.* at 14). Thus, Plaintiff  
4 Brandon McGaskey had adequate warning that dismissal would result from his  
5 noncompliance with the Court’s order to file an amended complaint and an application to  
6 proceed *in forma pauperis* or pay the full filing fee within thirty (30) days.

7 IT IS THEREFORE ORDERED that this action is dismissed without prejudice  
8 based on Plaintiff Brandon McGaskey’s failure to file an amended complaint and an  
9 application to proceed *in forma pauperis* or pay the full filing fee in compliance with this  
10 Court’s order dated April 15, 2020.

11 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment  
12 accordingly.

13 DATED: June 4, 2020.

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16 UNITED STATES DISTRICT JUDGE  
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